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10
11 IN THE UNITED STATES BANKRUPTCY COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SANTA ROSA DIVISION

14 In the Matter of

15 CHARLES DENIS DOWNIE and
16 LYDIA DOWNIE,

17 Debtors.

Case No. 10-11995
Chapter 13

CALIFORNIA DEPARTMENT OF VETERANS
AFFAIRS' OBJECTION TO THE AMENDED
CHAPTER 13 PLAN DATED DECEMBER 15,
2010

Date: January 26, 2011
Time: 10:00 a.m.
Place: 99 E Street, Santa Rosa, CA
Judge: Honorable Alan Jaroslovsky

Petition Filed: May 26, 2010

20 The California Department of Veterans Affairs ("CDVA" or "Department") hereby objects to
21 the confirmation of Debtors' Amended Chapter 13 Plan dated December 15, 2010.

22 INTRODUCTION

23 On November 29, 2010, the CDVA objected to Debtors' 7/22/10 Chapter 13 Plan. Docket No.
24 37. Subsequently, on or about December 3, 2010, Debtors amended their Chapter 13 Plan to account
25 for the new appraisal of their primary residence located at 10133 Fairway Drive, Kelseyville,
26 California 95451 ("subject property"). The subject property was appraised at \$120,000. Docket Nos.
27 38-40, Declaration of Puppo. For this reason, Debtors' 12/3/10 Amended Chapter 13 Plan (Docket
28 No. 43) only listed one lien secured by Debtors' primary residence—CalVet Loan No. 934328.

1 Debtors' junior liens are completely unsecured based on the appraisal and should be stripped.
2 However, the 12/3/10 Plan did not sufficiently take into consideration the stripping of the junior liens
3 on payments to unsecured claims.

4 On or about December 15, 2010, Debtors again amended their Chapter 13 Plan (hereinafter the
5 "12/15/10 Plan"). Docket No. 45. In the 12/15/10 Plan, Debtors slightly increased their overall plan
6 payments. However, the stripping of the junior liens should have increased their overall plan payments
7 by significantly more. Thus, the 12/15/10 Plan again does not sufficiently account for the stripped
8 junior liens and for this reason, the CDVA objects to the 12/15/10 Chapter 13 Plan (Docket No. 45).

9 **OBJECTIONS TO PLAN**

10 **A. The 12/15/10 Plan Does Not Apply All Projected Disposable Income to Unsecured** 11 **Claims**

12 Under 11 U.S.C. section 1325(b)(1)(B), a Chapter 13 plan must provide that "all of the debtor's
13 projected disposable income... will be applied to make payments to unsecured creditors under the
14 plan." The 12/15/10 Plan does not reflect the additional disposable income Debtors would have after
15 stripping the junior liens.

16 Debtors moved to strip the Department's home improvement loan, CalVet Loan No. 970512
17 (the CDVA's second loan with Debtors). Docket No. 27. Since the value of the subject property is
18 only \$120,000, this loan is entirely unsecured. This value also means that Creditor American General
19 Finance's junior lien is completely unsecured. Since the junior liens can be stripped, this means that
20 Debtors' mortgage payment is now just \$1,159.69 per month. Docket No. 43, p. 2. However, the
21 12/15/10 Plan does not reflect the decrease in Debtors' mortgage payments due to the stripping of the
22 junior liens.

23 Debtors' 7/22/10 Chapter 13 Plan stated that Debtors would make sixty (60) payments of
24 \$631.00. Docket No. 20, p. 1. In coming to this payment amount, the 7/22/10 Plan factored in a
25 combined mortgage payment of \$1,829.69 per month. Docket No. 20, p. 2. As noted above, Debtors'
26 mortgage payment is significantly lower with the stripping of the junior liens. The mortgage payment
27 is now \$1,159.69 per month or \$670.00 less than the amount considered in the 7/22/10 Plan when the
28 junior liens were not stripped. However, the 12/15/10 Chapter 13 Plan does not account for this \$670

1 per month increase in disposable income.

2 Debtors want to make six (6) payments of \$601 and fifty-four (54) payments of \$750 under the
3 12/15/10 Plan. This averages to payments of \$735.40 per month under the 12/15/10 Plan. This is an
4 increase of just \$104.40 per month compared to the payments stated in the 7/22/10 Plan. However,
5 with the stripped liens, Debtors should now be able to pay \$670 more per month than stated in the
6 7/22/10 Plan. The 12/15/10 Plan should now reflect sixty (60) payments of \$1,301 per month. The
7 12/15/10 Plan does not reflect this increase and Debtors have not explained why they have not
8 committed the extra \$670 per month of savings from the stripping of the junior liens in their most
9 recent Chapter 13 Plan.

10 It appears that Debtors, through their 12/15/10 Plan, are not applying all their projected
11 disposable income to their unsecured claims. Thus, the 12/15/10 Chapter 13 plan should not be
12 confirmed pursuant to 11 U.S.C. section 1325(b)(1)(B).

13 Dated: December 29, 2010

Respectfully submitted,

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15 ROBERT D. WILSON
16 Deputy Secretary and Chief Counsel
17 CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS

18 By /s/ Robert D. Wilson
19 ROBERT D. WILSON, Chief Counsel
20 Attorney for Creditor
21 The California Department of Veterans Affairs
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